Punitive Damages

BMW OF NORTH AMERICA, INC., PETITIONER v. IRA GORE, JR.

No. 94-896.

SUPREME COURT OF THE UNITED STATES

517 U.S. 559; 116 S. Ct. 1589; 134 L. Ed. 2d 809; 1996 U.S. LEXIS 3390; 64 U.S.L.W. 4335; 96 Cal. Daily Op. Service 3490; 96 Daily Journal DAR 5747; 9 Fla. L. Weekly Fed. S 585

October 11, 1995, Argued
May 20, 1996, Decided

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA.

DISPOSITION: *646 So.2d 619,* reversed and remanded

COUNSEL: Andrew L. Frey argued the cause for petitioner. With him on the briefs were Kenneth S. Geller, Evan M. Tager, Michael C. Quillen, Dennis J. Helfman, and David Cordero.

Michael H. Gottesman argued the cause for respondent. With him on the brief were Jonathan S. Massey, Andrew W. Bolt II, John W. Haley, Bruce J. McKee, Kenneth J. Chesebro, and Stephen K. Wollstein. *

* Briefs of amici curiae urging reversal were filed for the American Automobile Manufacturers Association et al. by Kenneth W. Starr, Paul T. Cappuccio, Christopher Landau, Richard A. Cordray, and Phillip D. Brady; for the American Council of Life Insurance et al. by Patricia A. Dunn, Stephen J. Goodman, Phillip E. Stano, and Theresa L. Sorota; for the American Tort Reform Association et al. by Victor E. Schwartz, Scott L. Winkelman, Sherman Joyce, and Fred J. Hiestand; for the Business Council of Alabama by Forrest S. Latta; for the Center for Claims Resolution by John D. Aldock and Frederick C. Schafrick; for the Chamber of Commerce of the United States of America by Timothy B. Dyk, Stephen A. Bokat, and Robin S. Conrad; for the Farmers Insurance Exchange et al. by Irving H. Greines, Robin Meadow, Barbara W. Ravitz, and Robert A. Olson; for the Life Insurance Company of Georgia et al. by Theodore B. Olson, Larry L. Simms, Theodore J. Boutrous, Jr., John K. Bush, Theodore J. Fischkin, and Marcus Bergh; for the National Association of Manufacturers by Carter G. Phillips and Jan Amundson; for the New England Council et al. by Stephen S. Ostrach; for Owens-Corning Fiberglas Corporation by Charles Fried, Michael W. Schwartz, and Karen I. Ward; for Owens-Illinois, Inc., by Griffin B. Bell and David L. Gray; for Pharmaceutical Research and Manufacturers of America by Andrew T. Berry; for the Product Liability Advisory Council, Inc., et al. by Malcolm E. Wheeler; for the TIG Insurance Company by Ellis J. Horvitz, Barry R. Levy, Frederic D. Cohen, and Mitchell C. Tilner; and for the Washington Legal Foundation et al. by Arvin Maskin, Steven Alan Reiss, Katherine Oberlies, Daniel J. Popeol, and Paul D. Kamenar.

Briefs of amici curiae urging affirmance were filed for the Alabama Trial Lawyers Association by Russell J. Drake; for the Association of Trial Lawyers of America by Jeffrey Robert White, Cheryl Flax-Davidson, and Larry S. Stewart; and for the National Association of Securities and Commercial Law Attorneys by Kevin P. Roddy, James P. Solimano, Steve W. Berman, and Jonathan W. Cuneo.

Briefs of amici curiae were filed for CBS, Inc., et al. by P. Cameron DeVore, Marshall J. Nelson, Douglas P. Jacobs, Jonathan E. Thackeray, John C. Fontaine, Cristina L. Mendoza, William A. Niese, Karlene Goller, Susan Weiner, Richard M. Schmidt, Jr., R. Bruce Rich, Slade R. Metcalf, Jane E. Kirtley, Bruce W. Sanford, and Henry S. Hoberman; for Trial Lawyers for Public Justice, P. C., by Leslie A. Brueckner and Arthur H. Bryant; for Richard L. Blatt et al. by Mr. Blatt, pro se, and Robert W. Hammesfahr, pro se; for James D. A. Boyle et al. by Arthur F. McEvoy III, pro se; and for Kenneth G. Dau-Schmidt et al. by Mark M. Hager, pro se.

JUDGES: STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion, in which O'CONNOR and SOUTER, JJ., joined, post, p. 586. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, post, p. 598. GINSBURG, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined, post, p. 607.

OPINIONBY: STEVENS

OPINION: [***818]

[*562] [**1592] JUSTICE STEVENS delivered the opinion of the Court.

The Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a "'grossly excessive'" punishment on a tortfeasor. *TXO Production Corp. v. Alliance* [***819] *Resources Corp., 509 U.S. 443, 454, 125 L. Ed. 2d 366, 113 S. Ct. 2711 (1993)* (and cases cited). The wrongdoing involved in this case was the decision by a national distributor of automobiles not to advise its dealers, and hence their customers, of predelivery [**1593] damage to new cars when the cost of repair amounted to less than 3 percent of the car's

suggested retail price. The question presented [*563] is whether a $ 2 million punitive damages award to the purchaser of one of these cars exceeds the constitutional limit.

I

In January 1990, Dr. Ira Gore, Jr. (respondent), purchased a black BMW sports sedan for $ 40,750.88 from an authorized BMW dealer in Birmingham, Alabama. After driving the car for approximately nine months, and without noticing any flaws in its appearance, Dr. Gore took the car to "Slick Finish," an independent detailer, to make it look "'snazzier than it normally would appear.'" *646 So. 2d 619, 621 (Ala. 1994)*. Mr. Slick, the proprietor, detected evidence that the car had been repainted. n1 Convinced that he had been cheated, Dr. Gore brought suit against petitioner BMW of North America (BMW), the American distributor of BMW automobiles. n2 Dr. Gore alleged, *inter alia*, that the failure to disclose that the car had been repainted constituted suppression of a material fact. n3 The complaint prayed for $ 500,000 in compensatory and punitive damages, and costs.

n1 The top, hood, trunk, and quarter panels of Dr. Gore's car were repainted at BMW's vehicle preparation center in Brunswick, Georgia. The parties presumed that the damage was caused by exposure to acid rain during transit between the manufacturing plant in Germany and the preparation center.

n2 Dr. Gore also named the German manufacturer and the Birmingham dealership as defendants.

n3 Alabama codified its common-law cause of action for fraud in a 1907 statute that is still in effect. *Hackmeyer v. Hackmeyer, 268 Ala. 329, 333, 106 So. 2d 245, 249 (1958)*. The statute provides: "Suppression of a material fact which the party is under an obligation to communicate constitutes fraud. The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case." Ala. Code § 6-5-102 (1993); see Ala. Code § 4299 (1907).

At trial, BMW acknowledged that it had adopted a nationwide policy in 1983 concerning cars that were damaged in the course of manufacture or transportation. If the cost of repairing the damage exceeded 3 percent of the car's suggested [*564] retail price, the car was placed in company service for a period of time and then sold as used. If the repair cost did not exceed 3 percent of the suggested retail price, however, the car was sold as new without advising the dealer that any repairs had been made. Because the $ 601.37 cost of repainting Dr. Gore's car was only about 1.5 percent of its suggested retail price, BMW did not disclose the damage or repair to the Birmingham dealer.

Dr. Gore asserted that his repainted car was worth less than a car that had not been refinished. To prove his actual damages of $ 4,000, he relied on the testimony of a former BMW dealer, who estimated that the value of a repainted BMW was approximately 10 percent less than the value of a new car that had [***820] not been damaged and repaired. n4 To support his claim for punitive damages, Dr. Gore introduced evidence that since 1983 BMW had sold 983 refinished cars as new, including 14 in Alabama, without disclosing that the cars had been repainted before sale at a cost of more than $ 300 per vehicle. n5 Using the actual damage estimate of $ 4,000 per vehicle, Dr. Gore argued that a punitive award of $ 4 million would provide an appropriate penalty for selling approximately 1,000 cars for more than they were worth.

n4 The dealer who testified to the reduction in value is the former owner of the Birmingham dealership sued in this action. He sold the dealership approximately one year before the trial.

n5 Dr. Gore did not explain the significance of the $ 300 cutoff.

In defense of its disclosure policy, BMW argued that it was under no obligation to disclose repairs of minor damage to new cars and that Dr. Gore's car was as good as a car with the original factory finish. It disputed Dr. Gore's assertion that the value of the car was impaired by the repainting and argued that this good-faith belief made a punitive award inappropriate. BMW also maintained that transactions in jurisdictions other than Alabama had no relevance to Dr. Gore's claim.

[*565] The jury returned a verdict finding BMW liable for compensatory damages of [**1594] $ 4,000. In addition, the jury assessed $ 4 million in punitive damages, based on a determination that the nondisclosure policy constituted "gross, oppressive or malicious" fraud. n6 See Ala. Code § § 6-11-20, 6-11-21 (1993).

n6 The jury also found the Birmingham dealership liable for Dr. Gore's compensatory damages and the German manufacturer liable for

both the compensatory and punitive damages. The dealership did not appeal the judgment against it. The Alabama Supreme Court held that the trial court did not have jurisdiction over the German manufacturer and therefore reversed the judgment against that defendant.

BMW filed a post-trial motion to set aside the punitive damages award. The company introduced evidence to establish that its nondisclosure policy was consistent with the laws of roughly 25 States defining the disclosure obligations of automobile manufacturers, distributors, and dealers. The most stringent of these statutes required disclosure of repairs costing more than 3 percent of the suggested retail price; none mandated disclosure of less costly repairs. n7 Relying on these statutes, BMW contended that its conduct was lawful in these States and therefore could not provide the basis for an award of punitive damages.

n7 BMW acknowledged that a Georgia statute enacted *after* Dr. Gore purchased his car would require disclosure of similar repairs to a car before it was sold in Georgia. Ga. Code Ann. § § 40-1-5(b)-(e) (1994).

BMW also drew the court's attention to the fact that its nondisclosure policy had never been adjudged unlawful before this action was filed. Just months before Dr. Gore's case went to trial, the jury in a similar lawsuit filed by another Alabama BMW purchaser found that BMW's failure to disclose paint repair constituted fraud. *Yates v. BMW of North America, Inc., 642 So. 2d 937 (Ala. 1993)*. n8 Before the [*566] judgment in this case, BMW changed its policy by taking steps to avoid the sale of any [***821] refinished vehicles in Alabama and two other States. When the $ 4 million verdict was returned in this case, BMW promptly instituted a nationwide policy of full disclosure of all repairs, no matter how minor.

n8 While awarding a comparable amount of compensatory damages, the *Yates* jury awarded no punitive damages at all. In *Yates*, the plaintiff also relied on the 1983 nondisclosure policy, but instead of offering evidence of 983 repairs costing more than $ 300 each, he introduced a bulk exhibit containing 5,856 repair bills to show that petitioner had sold over 5,800 new BMW vehicles without disclosing that they had been repaired.

In response to BMW's arguments, Dr. Gore asserted that the policy change demonstrated the efficacy of the punitive damages award. He noted that while no jury had held the policy unlawful, BMW had received a number of customer complaints relating to undisclosed repairs and had settled some lawsuits. n9 Finally, he maintained that the disclosure statutes of other States were irrelevant because BMW had failed to offer any evidence that the disclosure statutes supplanted, rather than supplemented, existing causes of action for common-law fraud.

n9 Prior to the lawsuits filed by Dr. Yates and Dr. Gore, BMW and various BMW dealers had been sued 14 times concerning presale paint or damage repair. According to the testimony of BMW's in-house counsel at the postjudgment hearing on damages, only one of the suits concerned a car repainted by BMW.

The trial judge denied BMW's post-trial motion, holding, *inter alia*, that the award was not excessive. On appeal, the Alabama Supreme Court also rejected BMW's claim that the award exceeded the constitutionally permissible amount. *646 So. 2d 619 (1994)*. The court's excessiveness inquiry applied the factors articulated in *Green Oil Co. v. Hornsby, 539 So. 2d 218, 223-224 (Ala. 1989),* and approved in *Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 21-22, 113 L. Ed. 2d 1, 111 S. Ct. 1032 (1991). 646 So. 2d at 624-625*. Based on its analysis, the court concluded that BMW's conduct was "reprehensible"; the nondisclosure was profitable for the company; the judgment "would not have a substantial impact upon [BMW's] financial position"; the litigation had been expensive; no criminal sanctions had been imposed on BMW for the same conduct; the award of *no* punitive [*567] damages in *Yates* reflected "the inherent uncertainty of the trial process"; and the punitive award bore a "reasonable relationship" to "the harm that [**1595] was likely to occur from [BMW's] conduct as well as . . . the harm that actually occurred." *646 So. 2d at 625-627*.

The Alabama Supreme Court did, however, rule in BMW's favor on one critical point: The court found that the jury improperly computed the amount of punitive damages by multiplying Dr. Gore's compensatory damages by the number of similar sales in other jurisdictions. *Id., at 627*. Having found the verdict tainted, the court held that "a constitutionally reasonable punitive damages award in this case is $ 2,000,000," *id., at 629,* and therefore ordered a remittitur in that amount. n10 The court's discussion of the amount of its remitted award expressly disclaimed any reliance on "acts that occurred in other jurisdictions"; instead, the court explained that it had used a "comparative analysis" that considered Alabama cases, "along with cases from other jurisdictions,

involving the sale of an automobile where the seller misrepresented the condition of the vehicle [***822] and the jury awarded punitive damages to the purchaser." n11 *Id., at 628.*

* * * *

[*568] Because we believed that a review of this case would help to illuminate "the character of the standard that will identify unconstitutionally excessive awards" of punitive damages, see *Honda Motor Co. v. Oberg, 512 U.S. 415, 420, 129 L. Ed. 2d 336, 114 S. Ct. 2331 (1994),* we granted certiorari, *513 U.S. 1125 (1995).*

II

Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition. *Gertz v. Robert Welch, Inc., 418 U.S. 323, 350, 41 L. Ed. 2d 789, 94 S. Ct. 2997 (1974); Newport v. Fact Concerts, Inc., 453 U.S. 247, 266-267, 69 L. Ed. 2d 616, 101 S. Ct. 2748 (1981); Haslip, 499 U.S. at 22.* In our federal system, States necessarily have considerable flexibility in determining the level of punitive damages that they will allow in different classes of cases and in any particular case. Most States that authorize exemplary damages afford the jury similar latitude, requiring only that the damages awarded be reasonably necessary to vindicate the State's legitimate interests in punishment and deterrence. See *TXO, 509 U.S. at 456; Haslip, 499 U.S. at 21, 22.* Only when an award can fairly be categorized as "grossly excessive" in relation to these interests does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment. Cf. *TXO, 509 U.S. at 456.* For that reason, the federal excessiveness inquiry appropriately begins with an identification of the state interests that a punitive award is designed to serve. We therefore focus our attention first on the scope of Alabama's legitimate interests in punishing BMW and deterring it from future misconduct.

No one doubts that a State may protect its citizens by prohibiting deceptive trade practices and by requiring automobile [*569] distributors to disclose presale repairs that affect the [**1596] value of a new car. But the States need not, and in fact do not, provide such protection in a uniform manner. Some States rely on the judicial process to formulate and enforce an appropriate disclosure requirement by applying principles of contract and tort law. n12 Other States have enacted [***823] various forms of legislation that define the disclosure obligations of automobile manufacturers, distributors, and dealers. n13 [*570] The result is a patchwork of rules representing the diverse policy judgments of lawmakers in 50 States.

* * * *

That diversity demonstrates that reasonable people may disagree about the value of a full disclosure requirement. Some legislatures may conclude that affirmative disclosure requirements are unnecessary because the self-interest of those involved in the automobile trade in developing and maintaining the goodwill of their customers will motivate them to make voluntary disclosures or to refrain from selling cars that do not comply with self-imposed standards. Those legislatures that do adopt affirmative disclosure obligations may take into account the cost of government regulation, choosing to draw a line exempting minor repairs from such a requirement. In formulating a disclosure standard, States may also consider other goals, such as providing a "safe harbor" for automobile manufacturers, distributors, and dealers against lawsuits over minor repairs. n14

n14 Also, a state legislature might plausibly conclude that the administrative costs associated with full disclosure would have the effect of raising car prices to the State's residents.

We may assume, *arguendo*, that it would be wise for every State to adopt Dr. Gore's preferred rule, requiring full disclosure of every presale repair to a car, no matter how trivial and regardless of its actual impact on the value of the car. [*571] But while we do not doubt that Congress has ample authority to enact [***824] such a policy for the entire Nation, n15 it [**1597] is clear that no single State could do so, or even impose its own policy choice on neighboring States. See *Bonaparte v. Tax Court, 104 U.S. 592, 594, 26 L. Ed. 845 (1881)* ("No State can legislate except with reference to its own jurisdiction. . . . Each State is independent of all the others in this particular"). n16 Similarly, one State's power to impose burdens on the interstate market for automobiles is not only subordinate to the federal power over interstate commerce, *Gibbons v. Ogden, 22 U.S. 1, 9 Wheat. 1, 194-196, 6 L. Ed. 23 (1824),* but is also constrained by the need to respect the interests of other States, see, *e. g., Healy v. Beer Institute , 491 U.S. 324, 335-336, 105 L. Ed. 2d 275, 109 S. Ct. 2491 (1989)* (the Constitution has a "special concern both with the maintenance of a national economic union unfettered by state-imposed limitations on [*572] interstate commerce and with the autonomy of the individual States within their respective spheres" (footnote omitted)); *Edgar v. MITE Corp., 457 U.S. 624, 643, 73 L. Ed. 2d 269, 102 S. Ct. 2629 (1982).*

n15 Federal disclosure requirements are, of course, a familiar part of our law. See, *e. g.*, the Federal Food, Drug, and Cosmetic Act, as added by the Nutrition Labeling and Education Act of 1990, 104 Stat. 2353, *21 U.S.C. § 343;* the Truth In Lending Act, 82 Stat. 148, as amended, *15 U.S.C. § 1604;* the Securities Exchange Act of 1934, 48 Stat. 892, 894, as amended, *15 U.S.C. § § 78l*-78m; Federal Cigarette Labeling and Advertising Act, 79 Stat. 283, as amended, *15 U.S.C. § 1333;* Alcoholic Beverage Labeling Act of 1988, 102 Stat. 4519, *27 U.S.C. § 215.*

* * * *

We think it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States. n17 Before this Court Dr. Gore argued that the large punitive damages award was necessary to induce BMW to change the nationwide policy that it adopted in 1983. n18 But by attempting to alter BMW's nationwide policy, Alabama would be infringing on the policy [***825] choices of other States. To avoid such encroachment, the economic penalties that a State such as Alabama inflicts on those who transgress its laws, whether the penalties take the form of legislatively authorized fines or judicially imposed punitive damages, must be supported by the State's interest in protecting its own consumers and its own economy. Alabama may insist that BMW adhere to a particular disclosure policy in that State. Alabama does not [*573] have the power, however, to punish BMW for conduct that was lawful where it occurred and that had no impact on Alabama or its residents. n19 [**1598] Nor may Alabama impose sanctions on BMW in order to deter conduct that is lawful in other jurisdictions.

* * * *

In this case, we accept the Alabama Supreme Court's interpretation of the jury verdict as reflecting a computation of the amount of punitive damages "based in large part on conduct that happened in other jurisdictions." *646 So. 2d at 627.* As the Alabama Supreme Court noted, neither the jury nor the trial court was presented with evidence that any of BMW's out-of-state conduct was unlawful. "The only testimony touching the issue showed that approximately 60% of the vehicles that were refinished were sold in states where failure to disclose the repair was not an unfair trade practice." *Id., at 627, n. 6.* n20 The Alabama Supreme Court therefore properly eschewed reliance on BMW's out-of-state conduct, *id., at 628,* and based its remitted award solely on [*574] conduct that occurred within Alabama. n21 The award must be analyzed in the light of the same conduct, with consideration given only to the interests of Alabama consumers, rather than those of the entire Nation. When the scope of the interest in punishment and deterrence that an Alabama court may appropriately consider is properly limited, it is apparent -- for [***826] reasons that we shall now address -- that this award is grossly excessive.

* * * *

III

Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose. n22 Three guideposts, each of which indicates that BMW did not receive adequate notice of the magnitude of the sanction that Alabama might impose for adhering to the nondisclosure policy adopted in 1983, lead us to the conclusion that [*575] the $ 2 million award against BMW is grossly excessive: the degree of reprehensibility of the nondisclosure; the disparity between the harm or potential harm suffered by Dr. Gore and his punitive damages award; and the difference between this remedy and the civil penalties authorized [**1599] or imposed in comparable cases. We discuss these considerations in turn.

* * * *

Degree of Reprehensibility

Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct. n23 As the Court stated nearly 150 years ago, exemplary damages imposed on a defendant should reflect "the enormity of his offense." *Day v. Woodworth, 54 U.S. 363, 13 HOW 363, 371, 14 L. Ed. 181 (1852).* See also *St. Louis, I. M. & S. R. Co. v. Williams, 251 U.S. 63, 66-67, 64 L. Ed. 139, 40 S. Ct. 71 (1919)* (punitive award may not be "wholly disproportioned to the offense"); *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 301, 106 L. Ed. 2d 219, 109 S. Ct. 2909 (1989)* (O'CONNOR, J., concurring in part and dissenting in part) (reviewing court "should examine the gravity of the defendant's conduct and the harshness of the award of punitive damages"). n24 This principle reflects the accepted view that some wrongs are more blameworthy than others. Thus, we have said that [*576] "nonviolent crimes are less serious than crimes marked by violence or the [***827] threat of violence." *Solem v. Helm, 463 U.S. 277, 292-293, 77 L. Ed. 2d 637, 103 S. Ct. 3001 (1983).*

Similarly, "trickery and deceit," *TXO, 509 U.S. at 462,* are more reprehensible than negligence. In *TXO*, both the West Virginia Supreme Court and the Justices of this Court placed special emphasis on the principle that punitive damages may not be "grossly out of proportion to the severity of the offense." n25 *Id., at 453, 462*. Indeed, for JUSTICE KENNEDY, the defendant's intentional malice was the decisive element in a "close and difficult" case. *Id., at 468.* n26

* * * *

In this case, none of the aggravating factors associated with particularly reprehensible conduct is present. The harm BMW inflicted on Dr. Gore was purely economic in nature. The presale refinishing of the car had no effect on its performance or safety features, or even its appearance for at least nine months after his purchase. BMW's conduct evinced no indifference to or reckless disregard for the health and safety of others. To be sure, infliction of economic injury, especially when done intentionally through affirmative acts of misconduct, *id., at 453,* or when the target is financially vulnerable, can warrant a substantial penalty. But this observation does not convert all acts that cause economic harm into torts that are sufficiently reprehensible to justify a significant sanction in addition to compensatory damages.

Dr. Gore contends that BMW's conduct was particularly reprehensible because nondisclosure of the repairs to his car formed part of a nationwide pattern of tortious conduct. Certainly, evidence that a defendant has repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument [*577] that strong medicine is required to cure the defendant's disrespect for the law. See *id., at 462, n. 28.* Our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more [**1600] reprehensible than an individual instance of malfeasance. See *Gryger v. Burke, 334 U.S. 728, 732, 92 L. Ed. 1683, 68 S. Ct. 1256 (1948).*

In support of his thesis, Dr. Gore advances two arguments. First, he asserts that the state disclosure statutes supplement, rather than supplant, existing remedies for breach of contract and common-law fraud. Thus, according to Dr. Gore, the statutes may not properly be viewed as immunizing from liability the nondisclosure of repairs costing less than the applicable statutory threshold. Brief for Respondent 18-19. Second, Dr. Gore maintains that BMW should have anticipated that its failure to disclose similar repair work could expose it to liability for fraud. *Id.*, at 4-5.

We recognize, of course, that only state courts may authoritatively construe state statutes. As far as we are aware, at the time this action was commenced no state court had explicitly addressed whether its State's disclosure statute provides a safe harbor for nondisclosure of presumptively [***828] minor repairs or should be construed instead as supplementing common-law duties. n27 A review of the text of the statutes, [*578] however, persuades us that in the absence of a state-court determination to the contrary, a corporate executive could reasonably interpret the disclosure requirements as establishing safe harbors. In California, for example, the disclosure statute defines "material" damage to a motor vehicle as damage requiring repairs costing in excess of 3 percent of the suggested retail price or $ 500, whichever is greater. Cal. Veh. Code Ann. § 9990 (West Supp. 1996). The Illinois statute states that in cases in which disclosure is not required, "nondisclosure does not constitute a misrepresentation or omission of fact." Ill. Comp. Stat., ch. 815, § 710/5 (1994). n28 Perhaps the statutes may also be interpreted in another way. We simply emphasize that the record contains no evidence that BMW's decision to follow a disclosure policy that coincided with the strictest extant state statute was sufficiently reprehensible to justify a $ 2 million award of punitive damages.

* * * *

[*579]

Dr. Gore's second argument for treating BMW as a recidivist is that the company should have anticipated that its actions would be considered fraudulent in some, if not all, jurisdictions. This contention overlooks the fact that actionable fraud requires a *material* [**1601] misrepresentation or omission. n29 This qualifier invites line-drawing of just the sort engaged in by States with disclosure statutes and by BMW. We do not think it can be disputed that there may exist minor imperfections in the finish of a new car that can be repaired (or indeed, left unrepaired) [***829] without materially affecting the car's value. n30 There is no evidence that BMW acted in bad faith when it sought to establish the appropriate line between presumptively minor damage and damage requiring disclosure to purchasers. For this purpose, BMW could reasonably rely on state disclosure statutes for guidance. In this regard, it is also significant that there is no evidence that BMW persisted in a course of conduct after it had been adjudged unlawful on even one occasion, let alone repeated occasions. n31

* * * *

Finally, the record in this case discloses no deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive, such as

were present in *Haslip* and *TXO*. *Haslip, 499 U.S. at 5; TXO, 509 U.S. at 453*. We accept, of course, the jury's finding that BMW suppressed [*580] a material fact which Alabama law obligated it to communicate to prospective purchasers of repainted cars in that State. But the omission of a material fact may be less reprehensible than a deliberate false statement, particularly when there is a good-faith basis for believing that no duty to disclose exists.

That conduct is sufficiently reprehensible to give rise to tort liability, and even a modest award of exemplary damages does not establish the high degree of culpability that warrants a substantial punitive damages award. Because this case exhibits none of the circumstances ordinarily associated with egregiously improper conduct, we are persuaded that BMW's conduct was not sufficiently reprehensible to warrant imposition of a $ 2 million exemplary damages award.

Ratio

The second and perhaps most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff. See *TXO, 509 U.S. at 459; Haslip, 499 U.S. at 23*. The principle that exemplary damages must bear a "reasonable relationship" to compensatory damages has a long pedigree. n32 Scholars have identified a number of early English statutes authorizing the [*581] award of multiple [***830] damages for particular wrongs. Some 65 different enactments during the period between 1275 and 1753 provided for double, treble, or quadruple damages. n33 Our [**1602] decisions in both *Haslip* and *TXO* endorsed the proposition that a comparison between the compensatory award and the punitive award is significant.

* * * *

In *Haslip* we concluded that even though a punitive damages award of "more than 4 times the amount of compensatory damages" might be "close to the line," it did not "cross the line into the area of constitutional impropriety." *499 U.S. at 23-24*. *TXO*, following dicta in *Haslip*, refined this analysis by confirming that the proper inquiry is "'whether there is a reasonable relationship between the punitive damages award and *the harm likely to result* from the defendant's conduct as well as the harm that actually has occurred.'" *TXO, 509 U.S. at 460* (emphasis in original), quoting *Haslip, 499 U.S. at 21*. Thus, in upholding the $ 10 million award in *TXO*, we relied on the difference between that figure and the harm to the victim that would have ensued if the tortious plan had succeeded. That difference suggested that the relevant ratio was not more than 10 to 1. n34

n34 "While petitioner stresses the shocking disparity between the punitive award and the compensatory award, that shock dissipates when one considers the potential loss to respondents, in terms of reduced or eliminated royalties payments, had petitioner succeeded in its illicit scheme. Thus, even if the actual value of the 'potential harm' to respondents is not between $ 5 million and $ 8.3 million, but is closer to $ 4 million, or $ 2 million, or even $ 1 million, the disparity between the punitive award and the potential harm does not, in our view, 'jar one's constitutional sensibilities.'" *TXO, 509 U.S. at 462,* quoting *Haslip, 499 U.S. at 18*.

[*582]

The $ 2 million in punitive damages awarded to Dr. Gore by the Alabama Supreme Court is 500 times the amount of his actual harm as determined by the jury. n35 Moreover, there is no suggestion that Dr. Gore or any other BMW purchaser was threatened with any additional potential harm by BMW's nondisclosure policy. The disparity in this case is thus dramatically greater than those considered in *Haslip* and *TXO*. n36

n35 Even assuming each repainted BMW suffers a diminution in value of approximately $ 4,000, the award is 35 times greater than the total damages of all 14 Alabama consumers who purchased repainted BMW's.

n36 The ratio here is also dramatically greater than any award that would be permissible under the statutes and proposed statutes summarized in the appendix to JUSTICE GINSBURG's dissenting opinion. *Post*, at 615-616.

Of course, we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* [***831] damages to the punitive award. *TXO, 509 U.S. at 458*. n37 Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine. It is appropriate, therefore, to reiterate our rejection of a categorical approach. Once again, "we return to what we said . . . in *Haslip:* 'We need not, and [*583] indeed we cannot, draw a mathematical bright line

between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concer[n] of reasonableness . . . properly enter[s] into the constitutional calculus.'" *Id., at 458* (quoting *Haslip, 499 U.S. at* [**1603] *18)*. In most cases, the ratio will be within a constitutionally acceptable range, and remittitur will not be justified on this basis. When the ratio is a breathtaking 500 to 1, however, the award must surely "raise a suspicious judicial eyebrow." *TXO, 509 U.S. at 481* (O'CONNOR, J., dissenting).

* * * *

Sanctions for Comparable Misconduct

Comparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct provides a third indicium of excessiveness. As JUSTICE O'CONNOR has correctly observed, a reviewing court engaged in determining whether an award of punitive damages is excessive should "accord 'substantial deference' to legislative judgments concerning appropriate sanctions for the conduct at issue." *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. at 301* (opinion concurring in part and dissenting in part). In *Haslip, 499 U.S. at 23,* the Court noted that although the exemplary award was "much in excess of the fine that could be imposed," imprisonment was also authorized in the criminal context. n38 In this [*584] case the $ 2 million economic sanction imposed on BMW is substantially greater than the statutory fines available in Alabama and elsewhere for similar malfeasance.

* * * *

[***832]

The maximum civil penalty authorized by the Alabama Legislature for a violation of its Deceptive Trade Practices Act is $ 2,000; n39 other States authorize more severe sanctions, with the maxima ranging from $ 5,000 to $ 10,000. n40 Significantly, some statutes draw a distinction between first offenders and recidivists; thus, in New York the penalty is $ 50 for a first offense and $ 250 for subsequent offenses. None of these statutes would provide an out-of-state distributor with fair notice that the first violation -- or, indeed the first 14 violations -- of its provisions might subject an offender to a multimillion dollar penalty. Moreover, at the time BMW's policy was first challenged, there does not appear to have been any judicial decision in Alabama or elsewhere indicating that application of that policy might give rise to such severe punishment.

* * * *

The sanction imposed in this case cannot be justified on the ground that it was necessary to deter future misconduct without considering whether less drastic remedies could be expected to achieve that goal. The fact that a multimillion dollar penalty prompted a change in policy sheds no light on the question whether a lesser deterrent would have adequately protected the interests of Alabama consumers. In [*585] the absence of a history of noncompliance with known statutory requirements, there is no basis for assuming that a more modest sanction would not have been sufficient to motivate full compliance with the disclosure requirement imposed [**1604] by the Alabama Supreme Court in this case.

IV

We assume, as the juries in this case and in the *Yates* case found, that the undisclosed damage to the new BMW's affected their actual value. Notwithstanding the evidence adduced by BMW in an effort to prove that the repainted cars conformed to the same quality standards as its other cars, we also assume that it knew, or should have known, that as time passed the repainted cars would lose their attractive appearance more rapidly than other BMW's. Moreover, we of course accept the Alabama courts' view that the state interest in protecting its citizens from deceptive trade practices justifies a sanction in addition to the recovery of compensatory damages. We cannot, however, accept the conclusion of the Alabama Supreme Court that BMW's conduct was sufficiently egregious to justify a punitive sanction that is tantamount to a severe criminal penalty.

The fact that BMW is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demands that the several States impose on the conduct of its business. Indeed, its status as an active participant in the national economy implicates the federal interest in preventing individual States from imposing undue burdens on interstate commerce. While each State [***833] has ample power to protect its own consumers, none may use the punitive damages deterrent as a means of imposing its regulatory policies on the entire Nation.

As in *Haslip*, we are not prepared to draw a bright line marking the limits of a constitutionally acceptable punitive damages award. Unlike that case, however, we are fully convinced that the grossly excessive award imposed in this [*586] case transcends the constitutional limit. n41 Whether the appropriate remedy requires a new trial or merely an independent determination by the Alabama Supreme Court of the award necessary to vindicate the economic interests of Alabama consumers is

a matter that should be addressed by the state court in the first instance.

> n41 JUSTICE GINSBURG expresses concern that we are"the *only* federal court policing" this limit. *Post*, at 613. The small number of punitive damages questions that we have reviewed in recent years, together with the fact that this is the first case in decades in which we have found that a punitive damages award exceeds the constitutional limit, indicates that this concern is at best premature. In any event, this consideration surely does not justify an abdication of our responsibility to enforce constitutional protections in an extraordinary case such as this one.

The judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

CONCUR:

JUSTICE BREYER, with whom JUSTICE O'CONNOR and JUSTICE SOUTER join, concurring.

* * * *

DISSENT:

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

Today we see the latest manifestation of this Court's recent and increasingly insistent "concern about punitive damages that 'run wild.'" *Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 18, 113 L. Ed. 2d 1, 111 S. Ct. 1032 (1991)*. Since the Constitution does not make that concern any of our business, the Court's activities in this area are an unjustified incursion into the province of state governments.

In earlier cases that were the prelude [***841] to this decision, I set forth my view that a state trial procedure that commits the decision whether to impose punitive damages, and the amount, to the discretion of the jury, subject to some judicial review for "reasonableness," furnishes a defendant with all the process that is "due." See *TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 470, 125 L. Ed. 2d 366, 113 S. Ct. 2711 (1993)* (SCALIA, J., concurring in judgment); *Haslip, supra, at 25-28* (SCALIA, J., concurring in judgment); cf. *Honda Motor Co. v. Oberg, 512 U.S. 415, 435-436, 129 L. Ed. 2d 336, 114 S. Ct. 2331 (1994)* (SCALIA, J., concurring). I do not regard the Fourteenth Amendment's Due Process Clause as a secret repository of substantive guarantees against [*599] "unfairness" -- neither the unfairness of an excessive civil compensatory award, nor the unfairness of an "unreasonable" punitive award. What the Fourteenth Amendment's procedural guarantee assures is an opportunity to contest the reasonableness of a damages judgment in state court; but there is no federal guarantee a damages award actually *be* reasonable. See *TXO, supra, at 471* (SCALIA, J., concurring in judgment).

* * * *

Because today's judgment represents the first instance of this Court's invalidation of a state-court punitive assessment as simply unreasonably large, I think it a proper occasion to discuss these points at some length.

* * * *

I

The most significant aspects of today's decision -- the identification of a "substantive due process" right against a "grossly excessive" award, and the concomitant assumption [*600] of ultimate authority to decide anew a matter of "reasonableness" resolved in lower court proceedings -- are of course not new. *Haslip* and *TXO* revived the notion, moribund since its appearance in the first years of this century, that the measure of civil punishment poses a question of constitutional dimension to be answered by this Court. Neither of those cases, however, nor any of the precedents upon which they relied, actually took the step of declaring a [***842] punitive award unconstitutional simply because it was "too big."

At the time of adoption of the Fourteenth Amendment, it was well understood that punitive damages represent the assessment by the jury, as the voice of the community, of the measure of punishment the defendant deserved. See, *e. g., Barry v. Edmunds, 116 U.S. 550, 565, 29 L. Ed. 729, 6 S. Ct. 501 (1886); Missouri Pacific R. Co. v. Humes, 115 U.S. 512, 521, 29 L. Ed. 463, 6 S. Ct. 110 (1885); Day v. Woodworth, 54 U.S. 363, 13 HOW 363, 371, 14 L. Ed. 181 (1852)*. See generally *Haslip, supra, at 25-27* (SCALIA, J., concurring in judgment). Today's decision, though dressed up as a legal opinion, is really no more than a disagreement with the community's sense of indignation or outrage expressed in the punitive award of the Alabama jury, as reduced by the State Supreme Court. It reflects not merely, as the concurrence candidly acknowledges, "a

judgment about a matter of degree," *ante*, at 596; but a judgment about the appropriate degree of indignation or outrage, which is hardly an analytical determination.

There is no precedential warrant for giving our judgment priority over the judgment of state courts and juries on this matter. The only support for the Court's position is to be found in a handful of errant federal cases, bunched within a few years of one other, which invented the notion that an unfairly severe civil sanction amounts to a violation of constitutional liberties. These were the decisions upon which the *TXO* plurality relied in pronouncing that the Due Process Clause "imposes substantive limits 'beyond which penalties may not go,'" *509 U.S. at 454* (quoting *Seaboard Air Line R. Co. v. Seegers, 207 U.S. 73, 78, 52 L. Ed. 108, 28 S. Ct. 28 (1907));*

* * * *

II

One might understand the Court's eagerness to enter this field, rather than leave it with the state legislatures, if it had something useful to say. In fact, however, its opinion provides virtually no guidance to legislatures, and to state and federal courts, as to what a "constitutionally proper" level of punitive damages might be.

We are instructed at the outset of Part II of the Court's opinion -- the beginning of its substantive analysis -- that "the federal excessiveness inquiry . . . begins with an identification of the state interests that a punitive award is designed to serve." *Ante*, at 568. On first reading this, one is faced with the prospect that federal punitive damages law (the new field created by today's decision) will be beset by the sort of "interest analysis" that has laid waste the formerly comprehensible field of conflict of laws. The thought that each assessment of punitive damages, as to each offense, must be examined to determine the precise "state interests" pursued, is most unsettling. Moreover, if those "interests" are the most fundamental determinant of an award, one would think that due process would require the assessing jury to be *instructed* about them.

It appears, however (and I certainly hope), that all this is a false alarm. As Part II of the Court's opinion unfolds, it turns out to be directed, not to the question "How much punishment is too much?" but rather to the question "Which acts can be punished?" "Alabama does not have the power," the Court says, "to punish BMW for conduct that was lawful where it occurred and that had no impact on Alabama or its residents." *Ante*, at 572-573. That may be true, though [*603] only in the narrow sense that a person cannot be *held liable to be punished* on the basis of a lawful act. But if a person has been held subject to punishment because he committed an *un*lawful act, the *degree* of his punishment assuredly *can* be increased on the basis of any other conduct of his that displays his wickedness, unlawful or not. Criminal sentences can be computed, we have said, on the basis of "information concerning every aspect of a defendant's life," *Williams v. New York,* [***844] *337 U.S. 241, 250-252, 93 L. Ed. 1337, 69 S. Ct. 1079 (1949).*

* * * *

The Court follows up its statement that "Alabama does not have the power . . . to punish BMW for conduct that was lawful where it occurred" with the statement: "Nor may Alabama impose sanctions on BMW in order to deter conduct that is lawful in other jurisdictions." *Ante*, at 572-573. The Court provides us no citation of authority to support this proposition -- other than the barely analogous cases cited earlier in the opinion, see *ante*, at 571-572 -- and I know of none.

* * * *

III

In Part III of its opinion, the Court identifies "three guideposts" that lead it to the conclusion that the award in this case is excessive: degree of reprehensibility, ratio between punitive award and plaintiff's actual harm, and legislative [*605] sanctions provided for comparable misconduct. *Ante*, at 574-585. The legal significance of these "guideposts" is nowhere explored, but their necessary effect is to establish federal standards governing the hitherto exclusively state law of damages. Apparently (though it is by no means clear) all three federal "guideposts" can be overridden if "necessary to deter future misconduct," *ante*, at 584 -- a loophole that will encourage state reviewing courts to uphold awards as necessary for the "adequat[e] protect[ion]" of state consumers, *ibid.* By effectively requiring state reviewing courts to concoct rationalizations -- whether within the "guideposts" or through the loophole -- to justify the intuitive punitive reactions of state juries, the Court accords neither category of institution the respect it deserves.

Of course it will not be easy for the States to comply with this new federal law of damages, no matter how willing they are to do so. In truth, the "guideposts" mark a road to nowhere; they provide no real guidance at all.

* * * *

These criss-crossing platitudes yield no real answers in no real cases. And it must be noted that the Court nowhere says that these three "guideposts" are the *only* guideposts; indeed, it makes very clear that they are not -- explaining away the earlier opinions that do not really follow these "guideposts" on the basis of *additional* factors, thereby "reiterating our rejection of a categorical approach." *Ante*, at 582. In other words, even these utter platitudes, if they should ever happen to produce an answer, may be overridden by other unnamed considerations. The Court has constructed a framework that does not [***846] genuinely constrain, that does not inform state legislatures and lower courts -- that does nothing at all except confer an artificial air of doctrinal analysis upon its essentially ad hoc determination that this particular award of punitive damages was not "fair."

The Court distinguishes today's result from *Haslip* and *TXO* partly on the ground that "the record in this case discloses no deliberate false statements, acts of affirmative misconduct, or concealment of evidence of improper motive, such as were present in *Haslip* and *TXO*." *Ante*, at 579. This seemingly rejects the findings necessarily made by the jury -- that petitioner had committed a fraud that was "gross, oppressive, or malicious," Ala. Code § 6-11-20(b)(1) (1993). Perhaps that rejection is intentional; the Court does not say.

The relationship between judicial application of the new "guideposts" and jury findings poses a real problem for the Court, since as a matter of logic there is no more justification for ignoring the jury's determination as to *how* reprehensible petitioner's conduct was (*i. e.*, how much it deserves to be punished), than there is for ignoring its determination that it was reprehensible *at all* (*i. e.*, that the wrong was willful and punitive damages are therefore recoverable). That the issue has been framed in terms of a constitutional right against unreasonably *excessive* awards should not obscure [*607] the fact that the logical and necessary consequence of the Court's approach is the recognition of a constitutional right against unreasonably *imposed* awards as well. The elevation of "fairness" in punishment to a principle of "substantive due process" means that every punitive award unreasonably imposed is unconstitutional; such an award is by definition excessive, since it attaches a penalty to conduct undeserving of punishment. Indeed, if the Court is correct, it must be that every claim that a state jury's award of *compensatory* damages is "unreasonable" (because not supported by the evidence) amounts to an assertion of constitutional injury. See *TXO, supra, at 471* (SCALIA, J. concurring in judgment). And the same would be true for determinations of liability. By today's logic, *every* dispute as to evidentiary sufficiency in a state civil suit poses a question of constitutional moment, subject to review in this Court. That is a stupefying proposition.

For the foregoing reasons, I respectfully dissent.

JUSTICE GINSBURG, with whom THE CHIEF JUSTICE joins, dissenting.

The Court, I am convinced, unnecessarily and unwisely ventures into territory traditionally within the States' domain, and does so in the face of reform measures recently adopted or currently under consideration in legislative arenas. The Alabama Supreme Court, in this case, endeavored to follow this Court's prior instructions; and, more recently, Alabama's highest court has installed further [**1615] controls on awards of punitive damages (see *infra*, at 613-614, n. 6). I would therefore leave the state court's judgment undisturbed, and resist unnecessary intrusion into an area dominantly of state concern.

* * * *

II

A

Alabama's Supreme Court reports that it "thoroughly and painstakingly" reviewed the jury's award, *ibid.*, according to principles set out in its own pathmarking decisions and in this Court's opinions in *TXO* and *Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 21, 113 L. Ed. 2d 1, 111 S. Ct. 1032 (1991). 646 So. 2d at 621*. The Alabama court said it gave weight to several factors, including BMW's deliberate ("reprehensible") presentation of refinished cars as new and undamaged, without disclosing that the value of those cars had been reduced by an estimated [*611] 10%, n1 the financial position of the defendant, and the costs of litigation. *Id., at 625-626.* These standards, we previously held, "impos[e] a sufficiently definite and meaningful constraint on the discretion of Alabama factfinders in awarding punitive damages." *Haslip,* [***849] *499 U.S. at 22;* see also *TXO, 509 U.S. at 462, n. 28*. Alabama's highest court could have displayed its labor pains more visibly, n2 but its judgment is nonetheless entitled to a presumption of legitimacy. See *Rowan v. Runnels, 46 U.S. 134, 5 HOW 134, 139, 12 L. Ed. 85 (1847)* ("This court will always feel itself bound to respect the decisions of the State courts, and from the time they are made will regard them as conclusive in all cases upon the construction of their own constitution and laws.").

n1 According to trial testimony, in late May 1992, BMW began redirecting refinished cars out of Alabama and two other States. Tr. 964. The jury returned its verdict in favor of Gore on June 12,

1992. Five days later, BMW changed its national policy to one of full disclosure. *Id.*, at 1026.

n2 See, *e. g.*, Brief for Law and Economics Scholars et al. as *Amici Curiae* 6-28 (economic analysis demonstrates that Alabama Supreme Court's judgment was not unreasonable); W. Landes & R. Posner, Economic Structure of Tort Law 160-163 (1987) (economic model for assessing propriety of punitive damages in certain tort cases).

We accept, of course, that Alabama's Supreme Court applied the State's own law correctly. Under that law, the State's objectives -- "punishment and deterrence" -- guide punitive damages awards. See *Birmingham v. Benson, 631 So. 2d 902, 904 (Ala. 1994)*. Nor should we be quick to find a constitutional infirmity when the highest state court endeavored a corrective for one counsel's slip and the other's oversight -- counsel for plaintiff's excess in summation, unobjected to by counsel for defendant, see *supra*, at 609 -- and when the state court did so intending to follow the process approved in our *Haslip* and *TXO* decisions.

B

The Court finds Alabama's $ 2 million award not simply excessive, but grossly so, and therefore unconstitutional. [*612] The decision [**1617] leads us further into territory traditionally within the States' domain, n3 and commits the Court, now and again, to correct "misapplication of a properly stated rule of law." But cf. this Court's Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). n4 The Court is not well equipped [*613] for this mission. Tellingly, the Court repeats that it brings to the task no "mathematical [***850] formula," *ante*, at 582, no "categorical approach," *ibid.*, no "bright line," *ante*, at 585. It has only a vague concept of substantive due process, a "raised eyebrow" test, see *ante*, at 583, as its ultimate guide. n5

* * * *

For the reasons stated, I dissent from this Court's disturbance of the judgment the Alabama Supreme Court has made. [***851]

APPENDIX TO OPINION OF GINSBURG, J.

STATE LEGISLATIVE ACTIVITY REGARDING PUNITIVE DAMAGES

State legislatures have in the hopper or have enacted a variety of measures to curtail awards of punitive damages. At least one state legislature has prohibited punitive damages altogether, unless explicitly provided by statute. See N. H. Rev. Stat. Ann. § 507:16 (1994). We set out in this appendix some of the several controls enacted or under consideration in the States. The measures surveyed are: (1) caps on awards; (2) provisions for payment of sums to state agencies rather than to plaintiffs; and (3) mandatory bifurcated trials with separate proceedings for punitive damages determinations.

[*615] I. CAPS ON PUNITIVE DAMAGES AWARDS

* *Colorado* -- Colo. Rev. Stat. § § 13-21-102(1)(a) and (3) (1987) (as a main rule, caps punitive damages at amount of actual damages).

* *Connecticut* -- Conn. Gen. Stat. § 52-240b (1995) (caps punitive damages at twice compensatory damages in products liability cases).

* *Delaware* -- H. R. 237, 138th Gen. Ass. (introduced May 17, 1995) (would cap punitive damages at greater of three times compensatory damages, or $ 250,000).

* *Florida* -- Fla. Stat. § § 768.73(1)(a) and (b) (Supp. 1992) (in general, caps punitive damages at three times compensatory damages).

* *Georgia* -- Ga. Code Ann. § 51-12-5.1 (Supp. 1995) (caps punitive damages at $ 250,000 in some tort actions; prohibits multiple awards stemming from the same predicate conduct in products liability actions).

* *Illinois* -- H. 20, 89th Gen. Ass. 1995-1996 Reg. Sess. (enacted Mar. 9, 1995) (caps punitive damages at three times economic damages).

* *Indiana* -- H. 1741, 109th Reg. Sess. (enacted Apr. 26, 1995) (caps punitive damages at greater of three times compensatory damages, or $ 50,000).

* *Kansas* -- Kan. Stat. Ann. § § 60-3701(e) and (f) (1994) (in general, caps punitive damages at lesser of defendant's annual gross income, or $ 5 million).

* *Maryland* -- S. 187, 1995 Leg. Sess. (introduced Jan. 27, 1995) (in general, would cap punitive damages at four times compensatory damages).

* *Minnesota* -- S. 489, 79th Leg. Sess., 1995 Reg. Sess. (introduced Feb. 16, 1995) (would require reasonable relationship between compensatory and punitive damages).

* *Nevada* -- Nev. Rev. Stat. § 42.005(1) (1993) (caps punitive damages at three times compensatory damages if compensatory damages equal $ 100,000 or more, and at $ 300,000 if the compensatory damages are less than $ 100,000).

[*616] * *New Jersey* -- S. 1496, 206th Leg., 2d Ann. Sess. (1995) (caps punitive damages at greater of five times compensatory damages, or $ 350,000, in certain tort cases).

* *North Dakota* -- N. D. Cent. Code § 32-03.2-11(4) (Supp. 1995) (caps punitive damages [**1619] at greater of two times compensatory damages, or $ 250,000).

* *Oklahoma* -- Okla Stat., Tit. 23, § § 9.1(B)-(D) (Supp. 1996) (caps punitive [***852] damages at greater of $ 100,000, or actual damages, if jury finds defendant guilty of reckless disregard; and at greatest of $ 500,000, twice actual damages, or the benefit accruing to defendant from the injury-causing conduct, if jury finds that defendant has acted intentionally and maliciously).

* *Texas* -- S. 25, 74th Reg. Sess. (enacted Apr. 20, 1995) (caps punitive damages at twice economic damages, plus up to $ 750,000 additional noneconomic damages).

* *Virginia* -- Va. Code Ann. § 8.01-38.1 (1992) (caps punitive damages at $ 350,000).

II. ALLOCATION OF PUNITIVE DAMAGES TO STATE AGENCIES

* *Arizona* -- H. R. 2279, 42d Leg., 1st Reg. Sess. (introduced Jan. 12, 1995) (would allocate punitive damages to a victims' assistance fund, in specified circumstances).

* *Florida* -- Fla. Stat. § § 768.73(2)(a)-(b) (Supp. 1992) (allocates 35% of punitive damages to General Revenue Fund or Public Medical Assistance Trust Fund); see *Gordon v. State, 585 So. 2d 1033, 1035-1038 (Fla. App. 1991),* aff'd, *608 So. 2d 800 (Fla. 1992)* (upholding provision against due process challenge).

* *Georgia* -- Ga. Code Ann. § 51-12-5.1(e)(2) (Supp. 1995) (allocates 75% of punitive damages, less a proportionate part of litigation costs, including counsel fees, to state treasury); see *Mack Trucks, Inc. v. Conkle, 263 Ga. 539, 540-543, 436 S.E.2d 635, 637-639 (Ga. 1993)* (upholding provision against constitutional challenge).

[*617] * *Illinois* -- Ill. Comp. Stat., ch. 735, § 5/2-1207 (1994) (permits court to apportion punitive damages among plaintiff, plaintiff's attorney, and Illinois Department of Rehabilitation Services).

* *Indiana* -- H. 1741, 109th Reg. Sess. (enacted Apr. 26, 1995) (subject to statutory exceptions, allocates 75% of punitive damages to a compensation fund for violent crime victims).

* *Iowa* -- Iowa Code § 668A.1(2)(b) (1987) (in described circumstances, allocates 75% of punitive damages, after payment of costs and counsel fees, to a civil reparations trust fund); see *Shepherd Components, Inc. v. Brice Petrides-Donohue & Assoc., Inc., 473 N.W.2d 612, 619 (Iowa 1991)* (upholding provision against constitutional challenge).

* *Kansas* -- Kan. Stat. Ann. § 60-3402(e) (1994) (allocates 50% of punitive damages in medical malpractice cases to state treasury).

* *Missouri* -- Mo. Rev. Stat. § 537.675 (1994) (allocates 50% of punitive damages, after payment of expenses and counsel fees, to Tort Victims' Compensation Fund).

* *Montana* -- H. 71, 54th Leg. Sess. (introduced Jan. 2, 1995) (would allocate 48% of punitive damages to state university system and 12% to school for the deaf and blind).

* *New Jersey* -- S. 291, 206th Leg., 1994-1995 1st Reg. Sess. (introduced Jan. 18, 1994); A. 148, 206th Leg., 1994-1995 1st Reg. Sess. (introduced Jan. 11, 1994) (would allocate 75% of punitive damages to New Jersey Health Care Trust Fund).

* *New Mexico* -- H. 1017, 42d Leg., 1st Sess. (introduced Feb. 16, 1995) (would allocate punitive damages to Low-Income Attorney Services Fund).

* *Oregon* -- S. 482, 68th Leg. Ass. (enacted July 19, 1995) (amending [***853] Ore. Rev. Stat. § § 18.540 and 30.925, and repealing Ore. Rev. Stat. § 41.315) (allocates 60% of punitive damages to Criminal Injuries Compensation Account).

[*618] * *Utah* -- Utah Code Ann. § 78-18-1(3) (1992) (allocates 50% of punitive damages in excess of $ 20,000 to state treasury).

III. MANDATORY BIFURCATION OF LIABILITY AND PUNITIVE DAMAGES DETERMINATIONS

* *California* -- Cal. Civ. Code Ann. § 3295(d) (West Supp. 1995) (requires bifurcation, on application of defendant, of liability and damages phases of trials in which punitive damages are requested).

* *Delaware* -- H. R. 237, 138th Gen. Ass. (introduced May 17, 1995) (would require, at [**1620] request of any party, a separate proceeding for determination of punitive damages).

* *Georgia* -- Ga. Code Ann. § 51-12-5.1(d) (Supp. 1995) (in all cases in which punitive damages are claimed, liability for punitive damages is tried first, then amount of punitive damages).

* *Illinois* -- H. 20, 89th Gen. Ass., 1995-1996 Reg. Sess. (enacted Mar. 9, 1995) (mandates, upon defendant's request, separate proceeding for determination of punitive damages).

* *Kansas* -- Kan. Stat. Ann. § § 60-3701(a) and (b) (1994) (trier of fact determines defendant's liability for punitive damages, then court determines amount of such damages).

* *Missouri* -- Mo. Rev. Stat. § § 510.263(1) and (3) (1994) (mandates bifurcated proceedings, on request of any party, for jury to determine first whether defendant is liable for punitive damages, then amount of punitive damages).

* *Montana* -- Mont. Code Ann. § 27-1-221(7) (1995) (upon finding defendant liable for punitive damages, jury determines the amount in separate proceeding).

* *Nevada* -- Nev. Rev. Stat. § 42.005(3) (1993) (if jury determines that punitive damages will be awarded, jury then determines amount in separate proceeding).

* *New Jersey* -- N. J. Stat. Ann. § § 2A:58C-5(b) and (d) (West 1987) (mandates separate proceedings for determination of compensatory and punitive damages).

[*619] * *North Dakota* -- N. D. Cent. Code § 32-03.2-11(2) (Supp. 1995) (upon request of either party, trier of fact determines whether compensatory damages will be awarded before determining punitive damages liability and amount).

* *Oklahoma* -- Okla. Stat., Tit. 23, § § 9.1(B)-(D) (Supp. 1995-1996) (requires separate jury proceedings for punitive damages); S. 443, 45th Leg., 1st Reg. Sess. (introduced Jan. 31, 1995) (would require courts to strike requests for punitive damages before trial, unless plaintiff presents *prima facie* evidence at least 30 days before trial to sustain such damages; provide for bifurcated jury trial on request of defendant; and permit punitive damages only if compensatory damages are awarded).

* *Virginia* -- H. 1070, 1994-1995 [***854] Reg. Sess. (introduced Jan. 25, 1994) (would require separate proceedings in which court determines that punitive damages are appropriate and trier of fact determines amount of punitive damages).